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December 21, 1954

Roy Y. Lang, Director
Division of Personnel
State House
Concord, New Hampshire

Re: Rules of Division of Personnel, Rule VII, Sec. 2, (a)

Dear Mr. Lang:

Your inquiry of December 14th requesting interpretation of the foregoing rule discloses an ambiguity which the Personnel Commission should resolve under the authority of R.L., c.27-B as inserted by Laws of 1950, C.9, S.6 (III).

By the first part of section 2 of rule VII of Rules of Division of Personnel compensatory time off is allowed "for work performed" on designated holidays. Paragraph (a) of said rule, read in conjunction with its precedent text, appears to be inconsistent therewith, unless it is assumed to apply to an employee who performs work on a holiday which is also the employee's regular day off. The use of the word "compensated" implies that the employee has not had time off on a holiday to which he would have been entitled normally.

Clerical employees having a stated Monday through Friday work week would not appear to be within the class of those contemplated to be included within paragraph (a) unless they work a Saturday holiday. Trades and custodial and professional employees usually having days off in the middle of the week, particularly those regarded as being "on call" on their days off, may require a literal application of paragraph (a) without regard to the "for work performed" condition of the preceding portion of section 2 of Rule VII in order to make sure that all employees in all classifications got the same number of holidays off in a year.

I am informed that your commission has been interpreting this paragraph (a) in this manner and the language is equally susceptible to this interpretation.

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Roy Lang, Director
Division of Personnel

Inasmuch as this problem is one of policy to be dealt with administratively I advise that you are at liberty to interpret this rule in either of the two alternatives as it is now written and that revision of the rule is required to insure clear legal interpretation. In your revision you should bear in mind the provisions of R.L., c. 367, s.3.

Very truly yours,

George F. Nelson
Assistant Attorney General

GPN/G